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**JUN 14 2005**

**OFFICE OF PETITIONS**

In re Application of  
Keeth et al.  
Application No. 09/893,389  
Filed: June 28, 2001  
Attorney Docket No. DB000575-014

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: DECISION GRANTING PETITION  
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This decision is in response to Applicants' "APPLICATION FOR PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR 1.705" timely<sup>1</sup> filed on August 16, 2004 requesting that the Office adjust the PTA determination from a determination of zero (0) days to a determining of five hundred and sixty-two (562) days.

Applicants' application for patent term adjustment is **GRANTED to the extent herein indicated**. The Office will adjust the PTA calculation to reflect that the correct determination at the time of the mailing of the notice of allowance is FIVE HUNDRED AND FORTY-THREE (543) days.

Applicants assert that they are entitled to 562 days of PTA because the Office failed to respond to applicants' response after non-final rejection within four months. See 37 CFR 1.702(a)(2). Applicants assert that the Office erred in entering the proper date of Response in PALM and accordingly thus failed to provide the proper amount of PTA. Applicants assert that the amendment was filed on May 9,<sup>2</sup> 2002 in response to the Office action mailed on February 12, 2002 but the date the response was entered into the PALM was January 26, 2004. Applicants assert that the date of January 26, 2004 was the date in which applicants resubmitted the amendment etc. in response to an examiner's request to resubmit file contents based upon a lost file and should not be considered the actual date of response to the Office action. Applicants do not suggest that there was any applicant delay in this the prosecution of this application.

Applicants arguments have been considered and are persuasive to the extent discussed infra. Specifically, the Office notes that the actual date of response to the February 12, 2004 Office

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<sup>1</sup> Issue fee paid on November 8, 2004

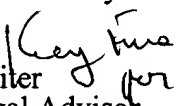
<sup>2</sup>The amendment was filed by 37 CFR § 1.8 certificate of mailing which was received in the USPTO on May 31, 2002. It should be noted that the certificate of mail date is not taken into consideration when determining PTA. See 37 CFR 1.703(f).

action is in fact May 31, 2002.<sup>3</sup> Accordingly, applicants did fail to respond to the Office action within the three month requirement pursuant to 37 CFR 1.704(b). Applicant delay was for nineteen (19) days.<sup>4</sup> However, because the Office did not reply to the May 31, 2002 response until April 14, 2004, the Office had an administrative delay of five hundred and sixty-two (562) days. Accordingly, the correct amount of patent term adjustment at the time of the mailing of the notice of allowance is five hundred and forty-three (562-19=543) days.

After mailing of this decision, the Office will forward this application to the Office of Patent Publications for a prompt issuance of the patent. The Office apologizes for any delay in the issuance of the patent. The Office notes that any additional administrative delay for not issuing the patent within four months of the payment of the issue fee and other requirements being satisfied will be added at the time of the issuance of the patent.

The Office has assessed the required \$200.00 application fee. No additional fees are required by the Office.

Any questions concerning this decision should be directed to Kery A. Fries, Senior Legal Advisor, Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy at 571-272-7757.

  
Karin Ferriter  
Senior Legal Advisor  
Office of Patent Legal Administration  
for Deputy Commissioner of Patent Examination Policy

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<sup>3</sup>Applicants believe the date of response to be May 9, 2002 because that is the date of the certificate of mailing, however, as noted earlier, certificates of mailing are not taken into consideration in calculating PTA. An applicant wishing to maximize PTA may wish to file their response to the Office action by express mail pursuant to 37 CFR § 1.10.

<sup>4</sup>Applicant delay began on May 13, 2002 and ended on May 31, 2002.